

**FLATHEAD COUNTY BOARD OF ADJUSTMENT  
MINUTES OF THE MEETING  
DECEMBER 1, 2020**

**CALL TO ORDER  
6:00 PM**

A meeting of the Flathead County Board of Adjustment was called to order at approximately 6:00 p.m. at the Expo Building at the Flathead County Fairgrounds, 265 N Meridian Road, Kalispell, MT 59901. Board members present were Ole Netteberg, Gina Klempel, Tobias Liechti, Cal Dyck and Roger Noble. Mark Mussman, Erin Appert, and Laura Mooney represented the Flathead County Planning & Zoning Office.

There were 4 members of the public in attendance.

**APPROVAL OF  
MINUTES  
6:00 PM**

Noble motioned, seconded by Liechti, to approve the October 6, 2020 minutes as written.

The motion passed unanimously on a roll call vote.

**PUBLIC COMMENT  
(Public matters that are  
within the jurisdiction of  
the Board 2-3-103  
M.C.A)  
6:01 PM**

None

**MARION & DUSTI  
HERRING  
(FZV-20-02)  
6:01 PM**

A request from Marion & Dusti Herring for a variance to Section 3.16.040(3)(A) of the Flathead County Zoning Regulations (FCZR), to the front yard setback in for a principle structure. The property is currently zoned RC-1 (Residential Cluster) and is located within the Bigfork Zoning District. The applicant would like to reduce the front setback from 20 feet to 18 feet in order to build a single-family dwelling and attached garage on property located at 152 Bjork Drive, Bigfork, MT.

**STAFF REPORT  
6:02 PM**

Erin Appert reviewed the Staff Report FZV-20-02 for the board.

**BOARD QUESTIONS**  
**6:04 PM**

Klempel asked about the received agency comments. Staff replied they had not received any more since packets went out. Agency referrals were also sent to the Bigfork Fire District and the Environmental Health Dept., however, no comments were received from those agencies. Klempel wondered if Flathead Electric had commented. no referral had been sent to them for comment

Liechti asked about setbacks and the building line. Staff explained there as 2' encroaching on the setback.

**APPLICANT  
PRESENTATION**  
**6:05 PM**

Marion Herring, 3174 Yellow Bay Lane., said he did not plan on building a house without getting permission. The HOA had indicated to them that multiple homes had been built in Eagle Bend within 15' setbacks. He never realized that he needed to get county permission in addition to the HOA approval. He explained in detail the section of the garage that was over the line and reiterated that there were other houses in the area that had done so as well.

**PUBLIC COMMENT**  
**6:06 PM**

None

**BOARD DISCUSSION**  
**6:06 PM**

Liechti asked the applicant to give more of a story of how they got to this point. The site plan clearly showed it was over the boundary line. Herring reiterated he did not know he needed county permission because the HOA had made it seem like it was ok. He said they could not have moved it over 2' because of the rocky topography and a cliff nearby.

Klempel asked how much room there was behind the garage. The foundation was within 3' of solid rock.

Dyck asked if Bigfork Water and Sewer had any objection and staff said they did not.

Noble asked if staff could walk them through the photographs. They discussed the site visit in detail. He did not see a drop off or cliff [which the applicant had referenced].

Dyck asked the applicant if the reason for the placement of the garage not being further on the cliff was because of the structure of the cliff. Herring discussed the intent was to stay away from the rock that was weathered. He discussed the soil that was shown on the pictures and applicant explained the topography of the land and his process of fill.

Dyck asked the applicant if the HOA had given him anything in writing saying that going within the setback was ok. The applicant said he had gotten permission to build the house as presented on the site map. Dyck confirmed that the HOA had seen the same site plan, that was before the board, and had approved it as is.

Klempel asked who was in charge of the HOA. Herring did not remember the names.

**BOARD DISCUSSION**  
**6:24 PM**

The board discussed the criteria which needed to be met. Dyck was concerned over the HOA approving something that was against County Regulations. He understood the concern of being too close to a cliff, but had the applicant known ahead of time, the applicant would have made the appropriate adjustments.

Netteberg said it was a good use of a lot that was unbuildable for years. He understood the idea was that they had to match the criteria but felt it was certainly not the owner's fault that the HOA had approved it.

The struggle Liechti had was that they were dealing with things after-the-fact and the applicant had knowingly built over the setback. The site plan was detailed and was prepared by a surveyor and architect who knowingly went over a county setback. The applicant interjected to let him know that he was the architect, and had hired a surveyor, and had presented it to the [HOA] board [for approval]. Liechti felt that was irrelevant. Herring said he did not know he needed permission. Liechti was in this line of work and said if he chose to build, or stake over a setback, he would get sued. It was a big deal. Herring said that, after dealing with the HOA process, he just wanted to get the house started to get his wife off his back. Liechti asked why he had not made the garage smaller. Herring replied because the HOA had approved it and he made the decision based on his knowledge at the time. Liechti implied that as an architect, he should have known better. Herring responded that the BOA had made other considerations for setbacks so there was a precedence. Liechti had hoped that there would be a reason, i.e. a mistake was made, for the oversight but did not understand his reasoning for knowingly going over a setback. Liechti did not know how the board would move forward to make the application meet all the criteria.

Klempel commended him for not trying to change the integrity of the shelf. She knew there may have been variances approved in the past, but it was not a one-size-fits all, and still needed to meet criteria. She wondered if the surveyor staked the property boundaries. Herring said they had.

Noble concurred with Liechti in that there had been a detailed site plan, with the setback marked and readily obvious. He felt bad the applicant received bad advice from the HOA but Herring was the responsible party. As the architect, it was his responsibility to know and go to the agencies to discuss the plans with them, upfront, and to see if adjustments needed to be made. He felt that trying to blame it on the HOA was irrelevant. It looked like a great house. It would have been easier to narrow the garage two feet in the plan set than to go through it now. The staff report had 7 negative out of 9 findings. One negative finding would bring denial. Noble stated it was an uphill battle.

Dyck wanted to walk through the criteria one at a time to see what they could or could not do.

Netteberg wanted to say that he was involved with the board because they addressed common sense.

The board discussed finding #1 at length. Dyck was not sure how to amend it without just ignoring it.

Mussman suggested the board try to decipher how the board members were going to vote before they try to amend each finding. He discussed in detail the reasons why variances would be approved and how to legally address it in the process.

Dyck asked each board member their intent and if they should look at the findings one by one.

Noble understood the builder's perspective on this, 2' was not too much, but he could have knowingly reduced the width of the garage and it would not be an issue. It had nothing to do with the topography. He could not get past finding #1 and there were 6 more negative findings. The rules were in place for a reason and his inclination was to decline.

Klempel believed they could work through it. There were mistakes but that was not the point at this stage. She acknowledged the land in that area was hard to work with.

Liechti would feel a lot differently if this was not an after the fact application. He did not want to set a precedence by approving this. He was in agreement with Noble regarding the negative findings.

Netteberg reiterated that they were talking about a corner of a garage. He would have approved it if the applicant had come in before they had started.

Dyck concurred with Noble and Liechti that it was difficult to address a variance as an after-the-fact. At the same time, Herring had given blue prints to an HOA

and had been misled by them. He appreciated that Herring had taken responsibility. He questioned what would happen if he had to bring the structure into compliance. Dyck wanted to see if they could find a solution to make it work. He did not like coming in after-the-fact but he did not feel like it would be setting a precedence because it would not have a huge impact. He felt they could come up with a common-sense solution.

Klempel said Prunty, supervisor at Flathead County Road and Bridge Department, had no objections. The agency comments did not object to the variance. She did not have a problem that it was two feet.

The board decided to go through each finding of fact to see if they could meet the qualifications.

They discussed finding number #1 in detail.

They discussed finding of fact #2 in detail

They discussed finding of fact #3 in detail

Mussman asked that they revisit #2. The board agreed with him.

They discussed finding of fact #4 in detail.

They discussed finding of fact #6 in detail. Dyck wanted to reword it to reflect the hardship of topography and other physical characteristics of the site.

Netteberg pointed out that all of the boards in the valley were going to run into more of this because all of the choice, buildable, flat, and level land was gone. Unbuildable lots were going to become buildable with the need of variances. He did not consider it an after-the-fact. He was fine with putting the blame on the HOA.

They discussed finding of fact #8.

They discussed finding of fact #9.

Mussman said at this point, they could ask to adopt the findings as amended.

**MAIN MOTION ON TO  
ADOPT F.O.F.  
(FZV-20-02)  
6:58 PM**

Netteberg made a motion, seconded by Klempel, to accept Staff Report FZV-20-02 as Findings-of-Fact as amended:

1. Strict compliance with the regulations would ~~not~~ limit the reasonable use of property because ~~the applicants could construct a garage in accordance with the setback requirements of the topography issues due to land configuration.~~
2. Strict compliance with the regulations ~~would not~~ *could* deprive the applicants of rights enjoyed by other properties similarly situated in the same district because ~~the applicants could construct a garage that is larger than the average garage size in the surrounding area there are several structures in the general area that encroach further into the setbacks than what is proposed and the physical~~



*characteristics of the site make it challenging to meet the setbacks.*

3. While the topography of the lot would limit the size and location of the garage, there does **not** appear to be a hardship based on circumstances over which the applicant has no control because there is adequate buildable area for a reasonable sized garage outside of the required setbacks.
4. The alleged hardship does **not** appear to be peculiar to the property because properties to the north are similarly situated at the top of a hill, contain steep slopes and rock outcroppings, and would have a building footprint similar to the subject property.
6. The hardship **does not** appear **to be economic because the property contains adequate buildable area outside the setbacks to accommodate a reasonable sized garage, however, a portion of the garage has already been constructed within the front yard setback due to the topography and other physical characteristics of the site.**
8. The variance requested does **not** appear to be the minimum variance which would alleviate the alleged hardship **because the garage could be constructed outside of the setback area and no variance would be required due to the physical issues of the property and the topography.**
9. Granting a variance would **likely not** confer a special privilege that is denied to other properties in the district because **similar properties in the vicinity that are developed appear to meet the setback requirements of the RC 1 zone and similar undeveloped lots will be subject to the same setback requirements when built out there are other structures in the area that encroach further into the setbacks.**

**ROLL CALL VOTE TO  
ADOPT F.O.F.  
(FZV-20-02)  
6:58 PM**

Motion passed on a roll 3-2 call vote. Liechti and Noble dissented.

**MOTION TO  
APPROVE  
(FZV-20-02)  
6:58 PM**

Netteberg made a motion, seconded by Klempel, to approve FZV-20-02.

**ROLL CALL TO  
APPROVE  
(FZV-20-02)  
6:59 PM**

Motion passed on a roll 3-2 call vote. Liechti and Noble dissented.

**RODNEY & TIA  
MACFARLANE  
(FCU-20-13)  
7:00 PM**

A request from Rodney & Tia Macfarlane for a conditional use permit to build three (3) four-plex apartment buildings on property located at 190 Jewel Basin Court in Bigfork, MT within the Bigfork Zoning District. The property is zoned B-3 (Community Business) and contains approximately .81 acres.

**STAFF REPORT  
7:00 PM**

Laura Mooney reviewed the Staff Report FCU-20-13 for the board.

**BOARD QUESTIONS  
7:02 PM**

None

**APPLICANT  
PRESENTATION  
7:02 PM**

Rod McFarlane, 1191 Majestic View Ln., was the applicant and was available for questions.

**PUBLIC COMMENT  
7:02 PM**

None

**BOARD DISCUSSION  
7:02 PM**

Noble asked for clarification on if they were requesting a zone change. Staff said it was not being changed but would be a conditional use under the current zoning. He did not have any further questions, they had approved things of this nature in the past.

Klempel asked if there were any comments from BLUAC. Staff responded that BLUAC did not meet, due to a lack of quorum, but they had questioned if MDT had submitted comment, which they had not. Klempel said they were looking at double the impact because they were looking at two applications. She wondered if traffic generation was just an estimate. Mussman clarified that the traffic engineers had done research for multi-family dwellings and had come up with a daily average trip per unit. This proposal was under the average trips for single family dwellings. They needed to keep in mind that it was in B-3 Commercial Zoning, which this would be a conditional use, and the traffic count had been taken into consideration at that time. Klempel clarified that this would be less impact than it would be if it were commercial use.

<b>MAIN MOTION ON TO ADOPT F.O.F. (FCU-20-13) 7:07 PM</b>	Liechti made a motion, seconded by Netteberg, to accept Staff Report FCU-20-13 as Findings-of-Fact.
<b>ROLL CALL VOTE TO ADOPT F.O.F. (FCU-20-13) 7:07 PM</b>	Motion passed unanimously on a roll call vote.
<b>BOARD DISCUSSION 7:07 PM</b>	Noble wanted to make sure that there was no encroachment permit needed from MDT. Mussman clarified that it was not needed.
<b>MAIN MOTION TO APPROVE (FCU-20-13) 7:08 PM</b>	Noble made a motion, seconded by Liechti, to approve FCU-20-13.
<b>ROLL CALL TO APPROVE (FCU-20-13) 7:08 PM</b>	Motion passed unanimously on a roll call vote.
<b>RODNEY &amp; TIA MACFARLANE (FCU-20-14) 7:09 PM</b>	A request from Rodney & Tia Macfarlane for a conditional use permit to build two (2) four-plex apartment buildings on property located at 139 Jewel Basin Court in Bigfork, MT within the Bigfork Zoning District. The property is zoned B-3 (Community Business) and contains approximately .64 acres.
<b>STAFF REPORT 7:09 PM</b>	Laura Mooney reviewed the Staff Report FCU-20-14 for the board.
<b>BOARD QUESTIONS 7:10 PM</b>	Noble asked for clarification on the maps in the staff report. Staff clarified which map was for which property.
<b>APPLICANT PRESENTATION 7:12 PM</b>	None



**PUBLIC COMMENT**  
**7:12 PM**

None

**BOARD DISCUSSION**  
**7:12 PM**

Klempel did not agree with the traffic impact data. She felt they needed to be cautious because they would be adding more and it was already bad. She did not feel comfortable with it. It was all subject to change in the future.

**MAIN MOTION ON TO**  
**ADOPT F.O.F.**  
**(FCU-20-14)**  
**7:13 PM**

Liechti made a motion, seconded by Netteberg, to accept Staff Report FCU-20-14 as Findings-of-Fact.

**ROLL CALL VOTE TO**  
**ADOPT F.O.F.**  
**(FCU-20-14)**  
**7:14 PM**

Motion passed on a 4-1 roll call vote. Klempel dissented.

**MOTION TO**  
**APPROVE**  
**(FCU-20-14)**  
**7:14 PM**

Liechti made a motion, seconded by Netteberg, to approve FCU-20-14.

**ROLL CALL TO**  
**APPROVE**  
**(FCU-20-14)**  
**7:14 PM**

Motion passed on a 4-1 roll call vote. Klempel dissented.

**OLD BUSINESS**  
**7:15 PM**

Mussman discussed that the Commissioners had adopted a resolution to deny a text amendment that had been proposed in which FCU-20-05 Starline Flights LLC was dependent upon. Since the conditional use permit would no longer be in compliance with the text amendment, he suggested they motion to deny FCU-20-05.

Noble recalled that it had been tabled under the condition that they had gotten the text amendment. Mussman verified that was what had occurred and suggested that because they did not get the text amendment, they could deny it at this point.

Noble thought the Planning Board had approved the text amendment. Mussman clarified that they had made a recommendation of approval but the Commissioners denied it. Noble wondered why it was denied and Mussman recalled that there were concerns of enforcement because Flathead County did not have a building department and it entailed building requirements.

Liechti wondered what the protocol should be and if the applicant should be

notified that it would be heard under old business at the next meeting.

They also discussed having a workshop, specifically regarding camp and retreat centers. Dyck wondered if they could sit down and walk through that section of the regulations for clarity of the umbrella of the camp and retreat center regulations and how to address the different dynamics and issues that arise.

**NEW BUSINESS**  
**7:25 PM**

None

**ADJOURNMENT**  
**7:26 PM**

The meeting was adjourned at approximately 7:26 pm pm on a motion by Dyck. The next meeting will be held at 6:00 pm on January 5, 2021.

  
\_\_\_\_\_  
Cal Dyck, Chairman

  
\_\_\_\_\_  
Angela Phillips, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED 1/5 2021